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Supreme Court, U.S.
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No. 90-770

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

TFD KOZERA, MIKE HANLEY, CHRIS KULERS, MICHAEL CINELLI, FRANK HONAN and JAMES STEMMERMAN,

Petitioners,

vs.

WESTCHESTER-FAIRFIELD CHAPTER OF NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC. and LOCAL UNION NO. 501 OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondents.

RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Question Presented For Review

Whether the Court of Appeals for the Second Circuit properly reversed in part the judgment of the District Court for the Southern District of New York when that District Court's judgment ignored the findings of an arbitration award under a labor contract and when the Court of Appeals reversal was based upon the legal principles of the proper application of an arbitration award by the federal district courts?

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Respondents.

RESPONDENT'S BRIEF IN OPPOSITION

Counter-statement Of The Case

The petition of the plaintiff-petitioners, six members of the respondent Local 501 seeks review of the reversal by the Second Circuit Court of Appeals, reported at 909 F.2d 48 (2d Cir. 1990), of the District Court's judgment

reported at 714 F.Supp 644 (SD NY 1989).

The Westchester-Fairfield Chapter of National Electrical Contractors Association, Inc. ("Chapter") is an employer association that represents various electrical contractors in the electrical construction industry for collective bargaining purposes. Local Union No. 501 of International Brotherhood of Electrical Workers, AFL-CIO ("Local 501") is an unincorporated association constituting a labor organization representing employees in an industry affecting commerce. Ted Kozera and the other named plaintiffs are electrical workers and members of Local 501.

Local 501's dispute with the Chapter arose from a 1983-1986 collective bargaining agreement

containing provisions for the renewal or renegotiation of the agreement and arbitration clauses for unresolved issues. Any arbitration was agreed to be brought before the Council on Industrial Relations for the Electrical Contracting Industry ("CIR"). The Court of Appeals characterized the nature of this dispute as being the role of labor arbitrators and courts in construing the validity of collective bargaining agreements that leave contested issues open for future negotiation by the parties.

Negotiations for a new collective bargaining agreement were conducted from May 1986 through June 1986 by a Joint Labor Management Committee composed of representatives of the Chapter and Local 501. The Chapter consistently emphasized to Local 501 during these

negotiations that it was essential for any new collective bargaining agreement to contain a Small Work Addendum. This Addendum was to provide a modified wage rate for residential and light commercial work to allow the union electrical contractors to compete more effectively with non-union electrical contractors and to recapture lost markets.

The Chapter and Local 501 agreed in a handwritten memorandum on June 13, 1986 to the terms of a collective bargaining agreement for a three year period which included a reference to the Small Work Addendum. The issue was negotiated at a meeting on April 27, 1987 and a proposed Residential Agreement and a Memorandum of Understanding were submitted by representatives of the International Brotherhood of

Electrical Workers ("IBEW) and the National Electrical Contractors Association, Inc. ("NECA").

Local 501 then submitted a draft of a proposed collective bargaining agreement to the Chapter which did not include any reference to residential or light commercial work. The Chapter refused to sign the draft agreement on the grounds that it did not reflect the June 13, 1986 Memorandum and did not incorporate the Small Work Addendum. Thereafter, Local 501 submitted the issue of the Small Work Agreement and the Chapter's refusal to sign it to the CIR for arbitration. The CIR decision dated May 18, 1987 ordered both parties to sign the Inside Wiremen's Agreement and the Residential Agreement.

Authorized representatives of

both Local 501 and the Chapter then signed the Inside Wiremen's Agreement, Residential Agreement, and the Memorandum of Understanding on June 11, and June 18, 1987. Business Manager Horrigan stated that he had the constitutional authority to sign the agreements and the consent of the membership due to their prior ratification. The Chapter treated the Residential Agreement as valid and began implementing its terms.

Six members of Local 501 in July of 1987 initiated this action alleging breach of duty of fair representation by the Local Union entering into the Residential Agreement and brought action against the Chapter for violating the Inside Wiremen's Agreement by putting into effect the Residential Agreement and Memorandum of Understanding. The District Court vacated the first CIR

award dated May 18, 1987 on the following grounds: that the arbitrator had exceeded his authority by instructing the parties to sign the Residential Agreement; that the only proper issue was whether the Chapter was justified in refusing to sign the Inside Wiremen's Agreement absent an agreement on residential work. This CIR decision was subsequently vacated and these issues were remanded to the CIR by order of Hon. John E. Sprizzo dated February 17, 1988. The CIR pursuant to the remand and by decision dated April 8, 1988, held:

> "Absent a resolution by the parties for Residential and Small Work, the Westchester-Fairfield Chapter, NECA is not required to sign the Inside Wiremen's Agreement in question."

The arbitrator held the three documents to be unitary; to be valid or invalid as a package. Contrary to the findings of fact of the second CIR

decision of April 8, 1988 the District Court, by order dated May 30, 1988, held that the Residential Agreement was not valid and that the Inside Wiremen's Agreement was binding and that the Chapter had violated the Inside Wiremen's Agreement by implementing the unauthorized provisions of the Residential Agreement.

The case was then appealed to the Court of Appeals for the Second Circuit. The Court of Appeals held:
(1) that the District Court had properly vacated the first CIR arbitration award based on the grounds that the arbitrator had overstepped the authority delegated;
(2) the Chapter was justified in refusing to sign the Inside Wiremen's Agreement because said agreement was contingent upon an agreement by the parties on the Residential Agreement;
(3) that the Residential Agreement and

Inside Wiremen's Agreement were binding on the parties.

ARGUMENT

There Is No Substantial Need To Grant The Petition

The Court of Appeals reversal of the District Court's ruling was based upon legal principles concerning judicial review of an arbitrator's decision. The Court of Appeals recognized the well-established principle, particularly in the context of labor relations, that:

> "Although a district court may vacate the findings of an arbitrator if it concludes that the arbitrator decided an issue beyond the scope of his or her delegated authority, see United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597-99 (1960); Courier-Citizen Co. v. Boston Electrotypers Union No. 11, 702 F.2d 273, 281-82 (1st Cir. 1983), the presumed authority of an arbitrator to resolve issues is broad, and courts expansively interpret the scope of an arbitrator's delegated authority by resolving doubts in favor of arbitrability." See AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 650 (1986); Transit Mix Concrete Corp. v. Local Union No. 282, 809 F.2d 963, 968 (2d Cir. 1987).

Applying the principles set forth above, the Court of Appeals declared that the District Court's vacation of the Residential Agreement, combined with its enforcement of the Inside Wiremen's Agreement, demonstrated an erroneous disregard of the Council of Industrial Relations' ("CIR") second decision dated April 8, 1988. The Court of Appeals finding was based upon the legal principle that the District Court cannot set aside an arbitrator's award which was decided within delegated authority.

The Petitioners inaccurately claim that the Court of Appeals' decision was based upon new findings of fact or an erroneous interpretation of the District Court's findings of fact. However the decision of the Court of Appeals makes it clear that it did not

reject the District Court's findings of fact but that it reversed on the grounds that the District Court too summarily dismissed the second CIR arbitration award that the District Court had ordered.

The Court of Appeals declared that the District Court properly vacated the first CIR award on the basis that the arbitrator "went beyond his delegated authority" by ordering the parties to sign the Residential Agreement because the parties delegated to the CIR only the power to decide the validity of the Inside Wiremen's Agreement. Having found so, the District Court remanded the following issue to the CIR: "Whether the Chapter was justified in refusing to sign the Inside Wiremen's Agreement absent an agreement on residential work."

Accordingly, the CIR issued a revised decision dated April 8, 1988 holding that absent an agreement on residential and small work, the Chapter was not required to sign the Inside Wiremen's Agreement. Nevertheless, this second CIR award was erroneously disregarded by the district court. The Court of Appeals recognized this error and stated: "They must rise or fall together."

The Court of Appeals correctly held that the District Court's disagreement with an arbitrator's factual findings is an insufficient basis for vacating the arbitrator's award. It is on that ground that the Court of Appeals found unsupported the District Court's holding that the Inside Wiremen's Agreement could be enforced even

absent the Residential and Small Work Agreement.

The Court of Appeals, having found that the Inside Wiremen's Agreement and the Residential Agreement "must rise or fall together", decided the question of whether both agreements should be enforced or declared invalid. The court held that a federal court has jurisdiction to determine the validity of a collective bargaining agreement pursuant to 29 USC Section 185(a) and ancillary to that determination has the power to declare a purported agreement either invalid or binding. The Court of Appeals for the Second Circuit joined the Third, Fifth, Seventh, Ninth, Tenth and Eleventh Circuits in allowing a district court to determine the validity of a collective bargaining agreement as

part of the power to determine whether there has been a breach. See IBEW, Local 481 v. Sign-Craft, Inc., 864 F.2d 499, 501-02 (7th Cir. 1988); Mack Trucks, Inc. v. International Union, UAAAIW, 856 F.2d 579, 586-90 (3d Cir. 1988), cert. denied, 108 S.Ct. 1316 (1989); Rozay's Transfer v. Local Freight Drivers, Local 208, 850 F.2d 1321, 1326 (9th Cir. 1988), cert. denied, 109 S.Ct. 1768 (1989); McNally Pittsburg, Inc. v. International Ass'n of Bridge, Structural & Ornammental Iron Workers, 812 F.2d 615, 617-19 (10th Cir. 1987); Board of Trustees v. Universal Enters., 751 F.2d 1177, 1184 (11th Cir. 1985); United Steelworkers of America v. Rome Indus., Inc., 437 F.2d 881, 882-83 (5th Cir. 1970).

The Court of Appeals declined to uphold both Agreements on the

grounds of the first CIR award because it had exceeded the CIR's authority. The Court of Appeals found however that both Agreements could be enforced on the grounds that they were signed by Local 501 and the Chapter.

The Court of Appeals held as a matter of law that the Chapter could reasonably believe that officers of the Local 501 had authority pursuant to the arbitration award to bind the union membership. See NLRB v. Local 815, Int'l Bhd. of Teamsters, 290 F.2d 99, 103 (2d Cir. 1961) (Friendly, J.) (a union may be responsible for the actions of its agents if third parties dealing with the agents reasonably believe the acts to be authorized); see also Metco Prods., Inc. v. NLRB, 884 F.2d 156, 159 (4th Cir. 1989); Central States Southeast and Southwest Areas

Pension Fund v. Kraftco, Inc., 799 F.2d 1098, 1112-14 (6th Cir. 1986), cert. denied, 479 U.S. 1086 (1987). The Court of Appeals held that because the Chapter had no reason to doubt the authority of union officers to comply with an arbitration order, both the Inside Wiremen's Agreement and the Residential Agreement are binding upon Local 501.

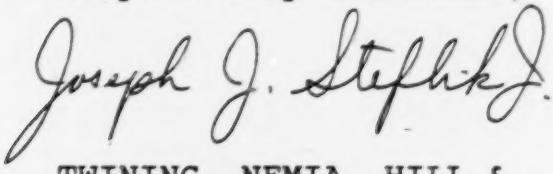
The Court of Appeals did not violate Rule 52(a) of the Federal Rules of Civil Procedure since it reversed based upon the District Court's erroneous application of legal principles regarding application of an arbitration award.

CONCLUSION

For the reasons outlined above, the petition for a writ of certiorari should be denied.

Date: December 11, 1990

Respectfully submitted,



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